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7 Judicial deference or political loyalty?

The Hungarian Constitutional Court's role in tackling crisis situations

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Introduction

Our basic presumption for this research is that some events and developments of recent years, such as the world financial crisis, terrorism or mass migration, may have affected the national legal systems in Europe, including the constitutional jurisprudence of the various countries. In the case of Hungary, we can say that both assumptions have been realised; that is, some general European tendencies have had deep impacts on Hungary's legal system and the constitutional practice of its Constitutional Court has also changed significantly. Hence, this country seems ideal to be studied for our purposes. The question is whether these challenges really have triggered the most important changes of constitutional jurisprudence, and what have been the internal dynamics of the very recent developments in the interpretive practice of the Hungarian Constitutional Court.

1. The system of constitutional adjudication in Hungary

The institution of the constitutional court does not have a long tradition in Hungary. In fact, a centralised Constitutional Court was one of the new institutions established during the country's transition to democracy, when it was founded by the constitutional amendment in 1989. The Court more or less was founded on the pattern of the German *Bundesverfassungsgericht*,[1] establishing a 'European' or 'Kelsenian' model of constitutional review. In the period of the 'system change', when the Communist rule came to end in Hungary, and the country became a Western-like constitutional democracy through peaceful political negotiations between the representatives of the old political leadership and the new opposition movements, the distrust between the negotiating parties led to the establishment of an independent Constitutional Court with wide-ranging responsibilities.

The Court was provided with an exclusionary power to examine the constitutionality of legal acts through abstract judicial review. Because everybody could submit any statutory act to the court for review (*actio popularis*), virtually, sooner or later, all important laws landed before the body. In certain areas, *ex ante* examination of the constitutionality of legal acts (e.g. international treaties or parliamentary standing orders) fell also within the competence of the Court, which

was also empowered to investigate conflicts between international treaties and the national law. The Court decided on individual constitutional complaints too, but in fact it was more an indirect judicial review of the statutes on which the individual judicial decisions were based. Another responsibility was (and is also today) to decide on the conflicts of competence between state organs. The function by which the Court could interpret the provisions of the Constitution without any individual legal dispute granted the Constitutional Court a primary political role because, in this respect, the Court appeared to be the final arbiter of discussions that usually have direct political implications.

The Court was established as a quasi-judicial organ; though it bore some characteristics of judicial tribunals (such as the structural independence or the irremovable status of the judges), other classical judicial principles and guarantees were missing in its procedure (there is no adversarial procedure, for example).[2] The body consisted of 11 members, who were elected by a two-thirds majority of MPs for nine years, and could be re-elected once. The original objective of the condition of qualified majority was to enforce a consensus between the government and the opposition parties of the day, thus eliminating in this way the partisan membership within the Court. This expectation, however, was only moderately realised; although the majority requirement was coupled with strict incompatibility rules, the objective of which was to keep party politics separate from the Court, the way its members were selected (i.e. parliamentary nomination and election) brought the body close to the party politics.

From 1990 onwards, the Constitutional Court established a rich and extensive jurisprudence; virtually, it has dealt with almost all classical issues as is usual in those Western countries that have much longer constitutional traditions. Undoubtedly, the Court reached a pre-eminent position in the Hungarian constitutional system, and it had great success in elaborating and standardising the living constitutional law. It is a commonly shared view among scholars that the Court, in the first nine years of its operation (the period is generally called Sólyom Court after its first president) followed a strongly 'activist' practice[3] relating both to its jurisdiction and to interpretive practice.[4] This activism based on a dispute resolution approach of constitutional review required the Court to decide all constitutional controversies that were submitted to it, rather than to escape from the responsibility of the ultimate decision. Accordingly, the Court not only decided on the most essential constitutional controversies, but, because every attempt to make a new Constitution between 1990 and 2011 proved to be unsuccessful, in a sense the Court undertook a quasi-constitution-making role. Although the body was frequently criticised for its jurisdictional and interpretive activism, this approach seemed to be widely accepted, partly due to the antagonistic relations between the rightist and leftist parties, which excluded any consensus on constitutional issues.

In the general elections of 2010 the former rightist opposition party, the Fidesz, and its satellite Christian Democratic Party won a landslide victory, and owing to the disproportionate election system, the new government acquired a two-thirds majority. In the spring of 2011, the Parliament, in the absence of the two democratic opposition parties (which, protesting against the 'destruction of the rule of

law', boycotted the whole constitution-making process), approved a new Fundamental Law of Hungary.

The new Constitution, effective from 1 January 2012, has introduced some explicit principles and methods of constitutional interpretation. The original standards of constitutional review were established by the Constitutional Court in the 1990s. The most important interpretive tool was the so-called 'necessity-proportionality test', by which the Court constantly reviewed the constitutionality of rights-limitations based more or less on the pattern of the jurisdiction of the German *Bundesverfassungsgericht*. This manner was codified by the Fundamental Law in Art. 1.[5] Another major general rule on constitutional interpretation can be found in Art. R para (3) of the Fundamental Law: '[t]he provisions of the Fundamental Law shall be interpreted in accordance with their purposes, with the Avowal of National Faith contained therein, and with the achievements of our historical constitution'. The new Constitution set up further rules of interpretation, partly related to economic considerations.[6]

The Fundamental Law significantly modified the competencies of the Constitutional Court. Thus, the *actio popularis* procedure was abolished, even though it had been the most effective tool to launch a judicial review procedure in constitutionally controversial cases for a long time. Instead, since 2012 only the head of state, the Government, the Commissioner of Fundamental Rights and the one-fourth of the members of Parliament have had the right to initiate the *ex post facto* abstract review of legislative acts. In addition, the Court was deprived of its power to review and annul budgetary laws and acts on taxes, duties, pensions, customs or any kind of financial contributions to the state, unless they violated the right to life and human dignity; the right to the protection of personal data; freedom of thought, conscience and religion; and the rights related to Hungarian citizenship. In theory, this limitation has been only provisional, as it would cease when the level of state debt goes below 50 per cent of the GDP. In reality, since then the Constitutional Court has not reviewed the public finance laws. Nevertheless, the Constitutional Court has been compensated to a degree for the loss of its fundamental power; the new constitution, on the German pattern, introduced the politically neutral institution of individual constitutional complaint. While the abstract constitutional review of legal acts has reduced since 2012 and has been a more or less irrelevant competence with regard to its measure, the individual constitutional complaint procedure has become the most viable opportunity for constitutional adjudication. However, the overall assessment of the case load shows that the control function over normative, mostly legislative acts has decreased significantly.[7]

The composition of the Constitutional Court was completely changed as well. Just a few months after its formation in 2010, the new coalition government using its two-thirds majority transformed the process of nominating the judges of the Constitutional Court. Since then, the membership of the parliamentary committee responsible for the nomination has no longer been based on parity, but has instead reflected the party-strength in the Parliament. Besides that, Art. 24 of the Fundamental Law introduced a new design with 15 judges instead of the former 11. The

new constitution also empowered Parliament to elect the head of the Court (before that, he or she was elected by the justices themselves).

2. The changing role and jurisprudence of the Constitutional Court in the era of the 'unorthodox economic policy' of Government

2.1 Changing constitutional landscape of national economy and public finance

As it has already been said, Hungary has been deeply affected by some of the challenges about which we talked in the Introduction. First, Hungary is a small, open economic system, highly dependent on the trends of the world economy. The country has been a Member State of the European Union since 2004 where it belongs to the economic periphery with its GDP amounting to about 65 per cent of the average gross national product of the EU countries. Although its rate of economic growth was above the EU average between 1997 and 2006, the results of the economic catching up policy have never been clear as the country has had financial accounting problems since her accession. Before the world economic crisis, since 2004, the European Commission proceeded with an excessive deficit procedure against Hungary because of its longstanding unbalanced budget. The crisis brought about serious economic depression almost immediately after its outbreak in the autumn of 2008, and increased sharply the financial risks of the country. The economic performance turned into a recession, as the loss of GDP was almost 7 per cent in 2009.

As a response to the rising financial risks, the Orbán Government after 2010 discontinued the policy lines of the former government, and started a so-called 'unorthodox' economic policy instead of the traditional and well-admitted instruments of economic recovery.[8] This means the application of unexpected and unusual policy measures such as extending the economic role of the state and limiting market competition; centralising state economic resources; keeping 'strategic enterprises' in Government hands and widening the range of the exclusive economic activity of state (e.g. establishing new monopolies); restructuring the ownership relations in a number of areas of the market economy (enhancing the influence of the 'national owners'); pursuing a protectionist economic policy (e.g. preferring Hungarian companies in public procurements); imposing sectoral special taxes (in banking, telecommunication, energy and retail sectors); rearranging foreign trade relations ('opening to the East'); or launching intensive public work projects (pursuing full employment).

Many pieces of this policy have had constitutional implications. Thus, the constitutional landscape of the economy was changed by the Fundamental Law of 2011. Most importantly, the change of jurisprudence was encouraged by the principles of constitutional interpretation laid down by the Fundamental Law requiring the Constitutional Court to respect extra-legal interests and objectives. Hence, the new Constitution not only prescribes that the constitutional provisions must be interpreted 'in accordance with their purposes', the preamble and the 'achievements' of the historical constitution,[9] but also requires – among

others – the Constitutional Court to respect the principles of the 'balanced, transparent and sustainable budget management' in the course of performing its tasks.[10]

The new constitution has also clarified the constitutional nature of the social and economic rights as state aims, instead of recognising them as basic rights. Although this might seem to be a decrease of protection, it brings the regulation closer to practice; the old constitution, for example, declared simply the right to work (as a remnant of its original text, dated in 1949), without any enforceable right. The Fundamental Law emphasises the importance of national assets and the empowerment of the legislature to determine the range of exclusive economic activities of the state. It refers also to the principles of social responsibility of the property right and the right to enterprise.

Moreover, as already mentioned, by restricting the review power of the Constitutional Court, the new basic law has pulled the public finance legislation out of constitutional control. Since then, there have not been any constitutional hurdles to the Government's economic, finance and tax policy. Another meaningful innovation was to create and place debt-brake rules in the Constitution. These provisions have restricted the budgetary power of Parliament, which may not adopt such a state budget 'as a result of which state debt would exceed half of the Gross Domestic Product', and, as long as the national debt exceeds half of the GDP, Parliament may only adopt a central budget that provides the reduction of the state debt.[11]

2.2 Changing constitutional jurisprudence in economic and financial matters

Despite (or precisely because of) the meaningful limitation of the Constitutional Court's review power in economic and financial issues, the jurisprudence of the Court has significantly changed in the past few years. However, at the very beginning after the general election of 2010, when the old judges were still in majority within the Court, the body tried to continue its earlier case-law. When the Orbán Government came to power in 2010, one of its first measures was to get a new legislation through the Parliament that imposed retroactively a 98 per cent tax on the so-called extreme severance payments paid in the public sector from the beginning of that year. The major argument was that these payments, even if they had been lawfully paid, had violated the 'good morals' (*contra bonos mores*) and therefore must be withdrawn. Because the retroactive taxation was expected to be found unconstitutional as it violates the principle of the rule of law,[12] the Government majority modified the old Constitution (of 1949/1989) allowing *ex post facto* tax-imposing legislation in the case of incomes acquired against good morals.[13] The Constitutional Court found that while the modified constitution allowed the retroactive tax-imposing legislation, the new law incorrectly defined severance payment as being against good morals, once it had been paid according to law.[14] As an immediate reaction to this ruling, the Government majority curtailed the review power of the Court in a way discussed above and adopted a modified version of the law on the 98 per cent tax on severance

payments This law was also sent to the Constitutional Court, and the Court, within its recently restricted jurisdiction, and under the political pressure upon it, found a compromise; while it declared unconstitutional that the law sanctioned the severance payment paid since 2005, it upheld retroactive taxation if it extended only to the beginning of the current tax year.[15,16]

One of the most important changes in constitutional jurisprudence was the reduction of the level of the protection of property rights. In 2012, for example, the Government decided to acquire a private savings bank that had a nationwide network of affiliations and had many small shareholders. For this purpose, it first obtained a share in this bank. However, when the other shareholders refused to allow the Government to gain full control over the bank, the Government majority passed a special legislation that effectively handed control of this bank to the national government. This law changed the ownership ratios and limited shareholders' rights (e.g. certain measures, such as issuing of bonds, reduction or increase of its capital are subject to the previous approval of the Savings Bank). The Hungarian Post was entitled to subscribe for the common shares at par value, which is considerably less than the reasonable value based on the Savings Bank's equity situation, and which made it impossible for the previous shareholders to pass resolutions. The constitutional complaints submitted by many shareholders were denied by the Constitutional Court.[17] The Court argued that the contested measures had been taken for the benefit of the earlier owners, as they strengthened the market position of the network of savings banks. Compared with the standards of protection of property rights developed in the 1990s, this was a serious change in jurisprudence. The property rights of the shareholders of the Savings Bank were taken away, which led to the quasi-nationalisation of the Savings Bank. Act CXXXV (135) 2013 on the integration of savings cooperatives created an integration which took away the legal, financial and operational independence of its members. The Hungarian Development Bank, with a call option to the shares of the Savings Bank, was put in an extremely strong position, by which it could pass whatever resolution it wished, thus giving the State a strong controlling position.

The economic crisis of 2008 and especially the rapid exchange rate depreciation of the Hungarian forint resulted in a significantly worsened situation of debtors.[18] Legislative acts aiming to help the situation and related judicial decisions were reviewed by the Constitutional Court continuously. Novel constitutional ideas, unconventional constitutional measures and new doctrinal solutions were born in foreign currency loan-related decisions. In its decision 34/2014. (XI. 14.) the Constitutional Court examined the constitutionality of the legislative act regulating basically two questions: namely, the nullity of exchange rate margins in foreign currency loan contracts and the presumed unfairness of provisions enabling banks to unilateral amendment of interests, fees and costs in foreign-currency consumer loan contracts.[19] According to the Constitutional Court the rules did not attain the level of unconstitutionality either in the details or as a whole. The Court acknowledged that the Act did have a restrictive effect on the fundamental rights in question such as on the freedom to contract, the right to property, the right to

fair trial and, furthermore, the Act might raise concerns with regard to its *ex tunc*, retroactive effect, which is against the rule of law, but the Act was not considered unconstitutional as the legislative solution was proportionate with the aim to protect the citizens in desperate financial situations. Giving priority to substantive justice before procedural justice is a new phenomenon in the Hungarian constitutional jurisprudence. The Court in this case argued with the responsibility of the state to provide help for people in desperate situations, and the legitimate aim to help people and do justice for them overruled former principles developed by the Constitutional Court related to the constitutional relevance of procedural fairness, legal stability, predictability and the ban on retroactive legislation (rule of law). This is why it could happen that although the Constitutional Court acknowledged many arguments that have been raised, it still rejected the claims. The Court noted that although this time it accepts the constitutionality of these problematic provisions, the legislative power should use these kinds of instruments in extraordinary cases and only in a narrow sense.[20] In the case of the review of the very same 2014 legislation, the second instance judges who dealt with these cases also turned to the Constitutional Court in judicial referrals, claiming that the law is unconstitutional due to breach of the principle of separation of powers, right to fair trial, rule of law and the legal certainty. In decision 2/2015. (II. 2.)[21] the Constitutional Court rejected all judicial referrals in this round as well. The Constitutional Court emphasised that the reasons explained in the earlier decision justify the restrictions referred to by the judges; therefore, on the basis of proportionality, these rules as well were found to be constitutional.

Yet, the protection of private persons, and the *ex post* risk sharing proved to trump these values. The changing approach of the Court is well characterised by another decision in which it declared that

> in the emergency situation of public finance deepened by the economic situation as well as the financial and economic crisis, it was inevitable to set as a long-term governmental goal, the reduction of public debt. A number of fair and legitimate demands and efforts had to be subject to this goal.[22]

Later, the Constitutional Court concluded a great number of decisions based on the same foreign currency loan crisis legislation. These judicial decisions applied this law. All claims were rejected,[23] although the CC itself acknowledged that the extraordinary emergency solutions were problematic from the rule of law point of view. The legislation imposed unreasonable burden on financial institutions with retroactive effect and furthermore did not allow for a fair trial.[24] Without going into the very rich details of the assessment of the case[25] we must summarise that before 2008, it was unimaginable that such an interpretation would be accepted by the majority of the Constitutional Court with regard to the classic rule of law values. Although it is not unprecedented that the Constitutional Court refers to unfavourable changes of the economic situation in its argumentation, this was very rare in the case law of the Constitutional Court. Reference to the emergency crises was also very different from the one in decision 34/2014 (IX. 14.) or 2/2015 (II. 2.).

At the very beginning of the 1990s, in its decision no. 26/1992. (IV. 30.) the Constitutional Court stated that

> [a]s a special, one-time circumstance of the change of the regime, in this social phenomenon, the trade union assets accumulated were put in a 'crisis situation' due to cessations and transformations without being settled legally. In this crisis situation the legislator shall secure the protection, the use, the usability and availability of trade union assets guaranteeing the constitutional freedom of the interest group until the terms of financial situation are not settled. The constitutionality of exceptional and one-off interventions is linked to the utmost importance of trade unions and the accomplished transition of trade unions. This, however, does not mean that the transition of other social organisations and settling the financial situation shall be conducted by subsequent legislation.

To contrast with this decision, in the Constitutional Court decision 23/2013. (IX. 25.) the Court declared that the abolishment of the possibility of the early retirement for certain state employees, such as for the policemen or for the members of the army,[26] is constitutional although the change was introduced with retroactive effect. The decision pointed out, that

> in the emergency situation of public finance deepened by the economic situation as well as the financial and economic crisis, it was inevitable to set as a long-term governmental goal, the reduction of public debt. A number of fair and legitimate demands and efforts had to be subject to this goal.[27]

This statement seems to be quite general and means that at any time when special and hard circumstances occur, it is legitimate to deviate from the original rules.

We argue, however, that according to the former jurisprudence of the Court, in case the state of emergency with its special rules has not been declared by the constitutionally dedicated bodies, no specific standards can be applied. The rule of law cannot be protected against the rule of law according to the famous wording of the Court.[28] Although there are very few decisions when the Constitutional Court had altered from regular standards in its former jurisprudence as well, the alterations were indicated as unique ones. What we find, however, in the new financial crisis related jurisprudence, is that special solutions become ordinary rules, because the Constitutional Court claims that whenever these difficulties or challenges occur (which is quite regular in the twenty-first century even if there is a normally operating state), the Constitutional Court can justify the alteration from settled constitutional standards. Although the constitutional framework is partly invented for the sake of providing stability for law and jurisprudence, according to the recent financial crisis related case law, there is diminished rule of law protection when the state is in trouble.

In another decision, the Constitutional Court upheld the extremely controversial law[29] that had completely restructured the tobacco retail trade market,

withdrawing the state concessions from previous tobacconists, and redistributing the government approvals through a highly debated application system. The Court argued that the earlier licences had not established a vested right for the tobacco sellers to continue their activity without limitation. Furthermore, it spectacularly turned away from its earlier practice when it declared that the tobacco seller's licence does not fall within the scope of the property rights. Since the early 1990s, the permanent practice of the Constitutional Court was to extend the protection of property rights to private financial savings, concessions, licenses and similar rights (representing pecuniary interests) on the basis that these rights have the same function as the property (i.e. 'the provision of the material basis of personal autonomy').[30] Notably, in contrast with this decision, the European Court of Human Rights held that the withdrawal of the prior licences by law without compensation was such a breach of property rights that was a violation of Art. 1 of the Protocol No. 1 of the European Convention of Human Rights.[31]

Nonetheless, it must be taken into consideration that because of the reduction of review powers of the Constitutional Court, the most important public finance cases have not been brought before the Court, or if there was a proper petition, referring to this limitation, the body did not undertake to decide the case. Probably, the activist Court of the early 1990s, on the basis of its rich jurisprudence on the right to human dignity, would dare to adjudicate such cases, especially when such important constitutional issues were at stake, for example, the constitutionality of the extraordinary sectoral taxes, the nationalisation of private pension savings without compensation, or withdrawal of vested rights.

3. Migration

Hungary was deeply affected by the migration influx to Europe in 2015. In that year, more than 400,000 migrants arrived in the country,[32] and most of them moved on to Austria and Germany. The country was not able to provide effective border guards to register all migrants and to control their movement. Under such circumstances, the Hungarian Government took a harsh anti-immigration stance from the very beginning of the migrant crisis, and heavily criticised the EU institutions for the way in which they managed the European migration crisis. It initiated a national referendum against the controversial quota system proposed by the EU for the resettlement of migrants among the Member States.[33] According to this plan, the member countries should share the burden of the migrant crisis relocating the asylum seekers from the front-line states (Greece and Italy) among all Member States. Under this plan, Hungary should admit 1,294 people from the total of 160,000. The government refused to accept any refugees under this programme, and filed a case at the European Court of Justice arguing that the EU institutions did not have the power to compel the Member States to allow migrants to settle therein. In addition, at the end of 2015, the Hungarian Government decided to build a border barrier (fence) on its border with Serbia and Croatia in order to prevent immigrants from entering the country illegally.

The Constitutional Court was involved in the fight against 'illegal migration'. First, it refused the petitions asking the Court to invalidate the resolution of Parliament to call the so-called 'quota-referendum'.[34] This popular vote was initiated by the Government in 2016 with the apparent purpose to refuse the refugee relocation policy of the European Union. Although the referendum was obviously unconstitutional for several reasons,[35] the Court interpreted its own scope of authority in a narrow way, arguing that it has the competence to examine only the procedural fairness of the relevant parliamentary resolution.[36] Albeit the law on the Constitutional Court really restricts the scope of constitutional review in such cases, it is to be noted that the jurisprudence of the Court in the 1990s and – occasionally also in the 2000s – was frequently characterised as 'activist' relating to its jurisdiction[37] and self-identity. Also for procedural reasons, without any substantive examination, the Court rejected the constitutional complaints challenging the supreme court's (*Kúria*) decision having approved the question of the referendum as legal.[38] According to the Court, the petitioners had no standing positions as they had not been addressed personally by this judicial decision.

Another decision of the Court was more important, because in this case its competence was not restricted at all. In December 2015 the Commissioner for Fundamental Rights submitted a petition to the Court requesting an abstract constitutional interpretation of two provisions of the Fundamental Law. One provision prohibits the 'collective expulsion' from the territory of Hungary of any Hungarian or foreign citizens. In this regard, the petition put the question whether this prohibition is valid also if another state expels people collectively. Apparently, the background consideration of this question was to encourage the Constitutional Court to declare that relocating 1,294 refugees to Hungary under the auspices of the EU relocation programme is unconstitutional according to Hungarian Fundamental Law (and as such, Hungary can not be obliged to accept and accommodate them). The petitioner explicitly argued that the transfer of these people to Hungary in a procedure 'implemented without the comprehensive examination on the merits of the individual situations of the applicants' is apparently a collective expulsion. The other relevant provision of the Fundamental Law was its Art. E para (2) which provides the constitutional mandate for Hungary's EU membership. This clause determines conditions for transferring competences to the EU institutions and for the joint exercise of powers deriving the Hungarian Constitution.[39] The interpretive questions of the Commissioner's petition was whether the Hungarian authorities are obliged to execute such measures of the EU law that are in contrast with the provisions of the Hungarian Fundamental Law, and if not, which Hungarian institution may declare that. It is worth noting that the Commissioner's questions are clearly based on the political position of the Hungarian Government that the EU Council exceeded its scope of competence when it decided on the relocation program, as this legal act of the EU was not based on a competence transferred by Hungary to the European Union. The Commissioner suggested that the Hungarian institutions are not constitutionally obliged to obey the *ultra vires* EU regulations and it is unconstitutional when the European

Union exercises a competence by going beyond the 'necessary extent' of the competences vested in the Union.

The Constitutional Court, referring to the 'National Avowal' (preamble) of the Fundamental Law and its 'EU-clause', stated that the joint exercising of any competence by the national authorities and the EU institutions may not violate Hungary's sovereignty, and, on the other hand, it cannot lead to the violation of 'constitutional identity'.[40] Both limitations reflected the Government's position attacking the cited EUC Decision 2015/1601. The Court stressed that with the EU accession, Hungary 'has not surrendered its sovereignty', and the national sovereignty 'should be presumed when judging upon the joint exercising of further competences additional to the rights and obligations provided in the Founding Treaties of the European Union'. In addition to this, the Court declared also that it reserves the power to interpret 'the concept of constitutional identity as Hungary's self-identity and it unfolds the content of this concept from case to case'.

Although the Constitutional Court underlined that it does not 'comment on the validity, invalidity or the primacy of application' of the EU legal acts, the whole ruling refutes this statement, as the Court declared itself the 'principal organ' of the protection and safeguarding of the sovereignty of Hungary and its constitutional identity.

The decision is in sharp contrast with the earlier jurisprudence of the Court which had never before claimed the power to review whether the EU legal acts are in harmony with the national sovereignty and the constitutional identity of Hungary. Instead, the Court always respected the division of review power between the European Court of Justice and itself and the primacy and direct applicability of the EU law.[41] According to the ruling approach and the unbroken practice of constitutional interpretation – based on a more or less identical constitutional text – the Constitutional Court does not have competence to review the legality of the EU legal norms.[42]

Before this, the Constitutional Court never developed arguments authorising itself to review the potentially *ultra vires* EU legislation or EU law infringing certain fundamental constitutional provisions.[43] The only reference to the constitutional boundaries of EU law is found in the Lisbon Decision. In this ruling,[44] the Constitutional Court offered the most comprehensive interpretation of the extent of the transfer of sovereignty and the role of the Constitutional Court in reviewing the constitutionality of the division of competence between Hungary and the EU. The petitioner requested the *a posteriori* examination of the unconstitutionality and also the annulment of the Act of Parliament implementing the Treaty of Lisbon. In the petitioner's opinion, certain rules of the Treaty of Lisbon restricted Hungary's sovereignty to an extent that, if their binding nature was recognised, the Republic of Hungary 'would no longer qualify as an independent state governed under the rule of law'. In this case, the Constitutional Court conducted a substantive constitutionality review, whose final conclusion was that the law promulgating the Treaty of Lisbon was not unconstitutional because the constitutions of Member States could still exercise control over the operation of the EU. The

principles of subsidiarity and proportionality would remain valid, and they ensure that the national parliaments would still have the power to review draft legislation. Also, Member States would have the right to initiate an action for annulment, citizens could turn to the institutions of the EU through a Citizens' Initiative, and the Charter of Fundamental Rights, which safeguards basic rights, now has the same value as the treaties.[45]

Summing up, it is clear that the Constitutional Court has substantially changed its position towards the relationship between the domestic and the EU law and its own concerning competence. As a judge in his concurring opinion explicitly supposed, 'the Constitutional Court should reconsider its judicial practice related to establishing the place of EU law in the legal system of Hungary'.[46]

Although in one respect the recent interpretive practice of the Court has approached the constitutional text (the Constitutional Court today seems to consider the EU Founding Treaties as international treaties, while in the past it emphasised that the EU law is a *sui generis* legal system), the reference to the constitutional identity is also an unprecedented (and unelaborate) innovation, while its identification with the national sovereignty which can be contrasted with the primacy of the EU law seems to be unfounded reasoning. What is noticeable, however, is its concurrence with the political argumentation of the governing coalition which insistently emphasises the importance of the protection of national sovereignty from the illegitimate influence of 'Brussels' as a symbol of the European Union.

4. Terrorism and inland security

Compared with France, Britain or Germany, Hungary has not been directly affected by terrorism. Indeed, since 2010 only two cases have occurred. The roots of the first case go back to the 2000s, when, according to the charges, the secretly operating extreme-right group 'Arrows of the Hungarians National Liberating Army' committed a number of violent actions against Hungarian politicians and other public figures, and against Roma and Jewish people and communities. The trial has been running since 2011, and it does not have links to international terrorism. The second relevant case is the trial of 'Ahmed H.' for terrorism, which was launched at the height of the 'migrant crisis' in Hungary and generated wide-ranging international attention and condemnation. According to the official charges, this migrant of Syrian origin incited the crowd waiting for admission at the Hungarian–Serbian border to violence, and then joined the turbulent events and disturbances that took place in September 2015.

Although neither of these two cases have been closed so far, the latter case served as a justification for the Government to submit a new constitutional amendment (its sixth since its entry on 1 January 2012) on the 'crisis situation caused by a terrorist threat', which was adopted by Parliament. The constitutionalisation of 'terrorist danger' has eliminated the constitutional control over the Government's special empowerment in emergency situation announced by the Parliament on account of a terrorist attack or any risk of terrorism.

Yet, the Constitutional Court has preserved its power to judge the constitutionality of any legal acts without this sort of crisis situation. In the exercise of this power, the new practice of the Court can be characterised by a much more deferential behaviour, or, in other words, a much less strict jurisprudence compared with previous times.

Notwithstanding that the terrorist threat has been given great emphasis in Government communication since the migrant flow of 2015, only a few legal acts have been adopted over last years related to domestic security, and even less have reached the Constitutional Court.

One of these was a legislative act amending the law on national security services in 2011. This law authorised the Minister of Justice to approve the application of secret information gathering (i.e. interception or surveillance) to the Counter Terrorism Centre. The Court, refusing the concerning constitutional complaints, upheld the new legislation.[47] Reasoning its decision, the Constitutional Court started off from the view that the way of preventing national security risks needs a political decision that justifies the empowerment of the Minister of Justice to permit secret information gathering. The Court considered it a sufficient guarantee that the Parliament's National Security Committee would exercise oversight over the Minister's authorization procedure. In this way, the Court upheld a general legal authorisation of the counter-terrorism agency without judicial oversight. It was a complete break with the previous case-law in which the Court always insisted on the safeguard of judicial review in such cases, having regard to the extent of the restriction of the right to privacy.[48]

> Since the use of secret tools and methods is a serious intervention in the life of the individuals, they can only be used as an exception, temporary, ultimate solution.[49]

However, the Court on this occasion read from the former decisions only the recognition that the use of secret surveillance, under certain circumstances, can be a necessary and proportionate limitation of basic rights. Surprisingly, the Constitutional Court also cited the jurisprudence of the ECtHR, even if the practice of the Strasbourg Court considers the use of such tools legitimate only if it is under a constant and compulsory control exercised by bodies which are independent of the executive power.[50] Interestingly, the legal case ended up in Strasbourg, where the ECtHR found that Art. 8. of the Convention rights were violated by the Hungarian legislation and the Hungarian Constitutional Court therefore did not provide sufficient remedy in the case.[51]

In light of this rupture with the earlier case-law, which has significantly reduced the level of protection of the right to privacy, it was quite surprising that the Court invalidated another new legislation extending the use of secret surveillance of public officials (making it permanent instead of one-time national security screening).[52]

In the context of domestic security issues, it is worth referring to the increasing limitation on political communication rights that has also been found

constitutional by the Constitutional Court. Freedom of assembly, as other political rights, may legitimately be limited for security reasons, but more restrictions of this nature have been imposed in recent times. According to the very liberal statutory regulation, adopted still in the times of the 'system change' in 1989, a street demonstration may be prohibited by public authorities only in two cases: if the police finds that it would seriously endanger the proper functioning of the representative institutions or courts, or if the circulation of the traffic cannot be secured by another route. Any other problem that might emerge during the event (such as the violation of rights of others or the risk of a crime) can result only in the dispersing of the event. In a recent decision, however, the Constitutional Court held that the police acted lawfully and constitutionally when they used a new, non-codified reason to the prior interdiction of a demonstration in front of the home of the prime minister (the reason was the assumed violation of the privacy of the inhabitants in the neighbouring district).[53] The Court also argued that there was an unconstitutional omission in the sense that the Parliament should amend the act on the freedom of assembly in order to regulate the cases when the freedom of assembly and the right to privacy are in collision. The new legislation has not been adopted yet, but it is quite likely that a stricter regulation will be agreed than the present one as a consequence of the decision of the Constitutional Court.

5. Explaining the changing constitutional jurisprudence

The Hungarian Constitutional Court was for two decades the most effective counterbalance of the Executive.[54] It was often considered as one of the strongest among similar courts, and an exemplar of the 'activist' judicial bodies. One could rationally presume that it had to play an important role in maintaining constitutionalism in turbulent times, when, as have seen, the country had to face serious challenges. In point of fact, the recent history of Hungarian constitutionalism suggests that certain crises, especially the economic depression and mass migration, have brought about considerable constitutional changes. In 2011, a new constitution was adopted, and a series of laws has renewed the whole legal system.[55] As we saw, the jurisprudence of the Constitutional Court has significantly changed, which is far from being attributed to the changed constitutional text.

However, a deeper analysis of the recent past of the constitutional review shows that there is hardly any connection between the transformation of the Constitutional Court's case-law and the real need to give responses to the present-day challenges. Put simply, even if some of the modern global crises have profoundly affected the country, these pressures were not the real reasons as to why the Court has altered its jurisprudence.

Although the negative effects and the risks of the world economic crisis, mass migration or the terrorist threat have been frequently referred to in political communication in the last few years, these circumstances did not play an important role in law-making processes, except in cases of the new constitutional and legal provisions relating to the relevant special legal orders. Thus, the Orbán Government declared already in the early 2010s that Hungary had recovered from the

economic depression, and when the excessive deficit procedure against the country was abolished in 2013, it was presented by the Government as a clear evidence that Hungary was beyond the crisis. Since then the so-called 'unorthodox economic policy' has not been communicated as a specific crisis management tool but instead as a special Hungarian way for stabilisation and economic growth. Similarly, though government propaganda has continuously laid stress upon the threat of mass migration and international terrorism, since the border fence was built, the migration pressure has practically ceased, and, as we saw, there has not been any violent act that could be linked to international terrorism. Even the restrictive laws were not justified by the crisis, or if this reason had been used, such kinds of references to it were later dropped.[56] In fact, crisis management was conducted mainly by political tools (like the national referendum on the EU 'migrant-quota') rather than by intensive or targeted law-making.

Paradoxically, the Constitutional Court, albeit only in words, tried to use the crisis-argument. Thus, it was a memorable and astonishing manifestation when a member of the Court, Barnabás Lenkovics, shortly before the parliamentary majority elected him to be the President of the Constitutional Court, said in an interview:

> Constitutional adjudication is not independent of time and space. It must keep the pace with the changing conditions. The same standards that were developed and used for law-making by the Constitutional Court under stable […] circumstances, cannot be invariably applied to different historical conditions. Otherwise, some measures could become dogmas, which would paralyze the operation of the legislature, the government, or even the system of rule of law, and it would make it impossible to handle the [economic] crisis.[57]

These words probably expressed the attitude of the new judges who had been selected and elected one-sidedly by the Government parties; namely, that extraordinary conditions provoked extraordinary solutions, including the reduction in the level of rights-protection or the weakening of constitutional review compared within previous periods. This was a really new approach, as a reverse logic would have followed from the previous practice of the Constitutional Court: In times of crises there is a growing need for constitutional guarantees of fundamental rights and for the strengthening of the rule of law.

In practice, however, the Constitutional Court referred only rarely to the constraints arising from the crisis situations in reasoning its own decisions. When the Court so resolutely upheld the legislative acts of the Government majority, and endorsed the unprecedented extension of the executive power, usually it did not allude to any predicament or emergency situation as a legitimacy basis for its approval.

When this was not the case, the Court's references to the economic crisis 'as a context' served only for a general and loose justification for revising the previously formulated standards without any further legal reasoning, or as a legal ornament concealing the lack of real arguments.

Thus, the Constitutional Court decision 8/2014 (III. 20.) highlighted – in the case of early repayment scheme in mortgage loan cases – that

> a significant, exceptional and serious situation occurred in Hungary in the middle of an international crises which led to an intervention by law.[58]

The reference made to the economic crisis appears in Constitutional Court decisions of 34/2014 (XI 14.) and 2/2015 (II. 2.) as well. The reasoning of the previous one suggested that

> it is commonly known that following the economic crisis of 2008–2009, hundreds of thousands of loan contracts persistently appeared and caused enormous difficulties. A mass of households had to face difficult situations; tens of thousands of families were threatened with eviction. Negative effects of the problem are borne by the society, the whole of the national economy. These problems could have not been resolved by judicial way (as part of individual judicial protection).[59]

A further argument supporting our claim that the changes of constitutional adjudications which have taken place since 2010 cannot be explained by a legal crisis management scenario, is that the jurisprudence of the Court has been deeply transformed in some other areas of law that had not been affected either by the economic crisis or the migration or other global challenges at all. The level of rights-protection was drastically reduced by the Constitutional Court in the case of some other civil liberties, as the Court was not able to prevent the guarantees of the rule of law being weakened, or in some cases undermined. In short, the changes of the Court's case-law were far from being confined to the legal areas affected by crisis or major challenges.

But if it is true that the considerable changes in constitutional jurisprudence cannot be attributed to an adaptation process, in which the major constitutional doctrines and the interpretive practices are adjusted to the changing needs of the changing times, the question remains: For what reasons have the mainstream and outcomes of the Constitutional Court's case-law changed to such a great extent?

We think that the unquestionable changes can only be understood by taking into account their wider context and the developments that formed them. The Hungarian constitutional changes that have taken place since 2010,[60] when the general elections brought about an overwhelming victory for the former opposition parties, and a new conservative Government coalition, based on a two-thirds (i.e. constitution-making) parliamentary majority, started to change the constitutional landscape of the country. Exploiting this overwhelming majority, the Government parties got their own political will through the Parliament, and voted for the new constitution without the consent or even the cooperation of the opposition parties. The adoption of the Fundamental Law of 2011 was followed by a period of intensive law-making activity, which significantly transformed almost all branches of law and legal areas. Both the constitution-making process and the following

legislative activity led not only to fierce debates in the country but also caused a stir on an international level as well. The reason for this attention and the heavy criticism was that the measures of the two consecutive terms of Orbán Government after 2010 systematically dismantled the principles of the separation of powers and the rule of law.[61] These developments and events aroused a lot of criticism in international forums, and induced the EU institutions to establish a mechanism of controlling the state of the rule of law, democracy and fundamental rights in the Member States.

The prime minister Viktor Orbán, in a speech in July 2014 openly expressed his views about the policy objectives of the Government. While praising Singapore, China, India, Turkey, Russia as 'making [their] nations successful', and as the new 'stars of international analyses', he stated that 'the new state that we are building is an illiberal state, a non-liberal state'.[62]

The new constitution and the following legislative acts have fundamentally affected also the constitutional adjudication, not only for the newly introduced, constitutionally binding interpretive principles, but also because they have reduced the level of rights-protection: For example, social rights became 'state goals' instead of their former position as fundamental rights deserving elevated protection, or the Fundamental Law enables the legislature to make differences between religious communities, regulates hate speech against the previous constitutional doctrine and restricts political advertisements.

Since the Constitutional Court had been from its very beginnings a powerful counterbalance to executive power, it is not surprising that the body was involved in constitutional changes. As we have discussed above, just a few months after its formation, the new coalition government, using its two-thirds majority transformed the process of nominating the justices of the Constitutional Court. Since then, the membership of the parliamentary committee responsible for the nomination has no longer been based on parity, but reflects the party-strength in the Parliament. Whereas the earlier regulation required a compromise between the parties to nominate justices, under the new conditions, the government parties were able to pack the Court, and the newly elected members of the Court were all elected by the new two-thirds majority of the Parliament given by the governing Fidesz–Christian-Democratic party coalition [later in 2016 the agreement of the green party (LMP) became necessary to elect the four new judges]. By 2016 all judges of the Constitutional Court were elected for 12 years instead of the former 9-year term and all of them are consented to if not appointed by the ruling majority.

The Fourth Amendment to the Fundamental Law in March 2013, with the apparent purpose to force the body to change its interpretive practice, repealed all rulings of the Constitutional Court made prior to the entry into force of the Fundamental Law (1st January 2012).[63] By inscribing the controversial provisions into the text of the Fundamental Law, the same amendment created a hostile environment by openly overruling many former Constitutional Court decisions that had declared important legislative acts of the government majority in Parliament to be unconstitutional.

In effect, in the light of the successful court-packing, it is slightly surprising that the government majority curtailed the review power of a friendly Court in a way as we have seen already, as the repeal of the old decisions can be considered as a precautionary measure with the hope of long-term effects. The underlying reason could be that a strong and independent constitutional review cannot be compatible with parliamentary supremacy[64] in a country where the government parties enjoy a huge popular support, and a constitution-making majority in Parliament.

The Constitutional Court, in its new composition, did not disappoint for those who had designed and accomplished the changes in the institutional setting and the membership of the Court. Both the available qualitative[65] and quantitative[66] research show that in controversial political issues the Court usually makes a decision favourable for the Government, and that the new judges more or less follow their own political orientations.

If we analyse the reasons for the changes in the constitutional environment and especially of the practice of the Constitutional Court since 2010, we can conclude that the world financial crisis, the terrorist danger, the flow of migrants or any other new challenges do not provide plausible explanations for all these fundamental changes that have occurred not only in crisis-led cases but in other areas too. Most changes of constitutional jurisprudence have been brought about by the unquestionable authoritarian tendencies building up a so-called 'illiberal democracy', declining all institutional counterbalances against the executive power.

Of course, even a 'new authoritarianism' might be considered as a special response to the modern challenges of our world. However, if one considers this a realistic option, it must be made clear that this kind of political discourse is outside the dimension of constitutional democracies.

Notes

1 Halmai 2007, 693.
2 Sólyom (2001), 114–115; Sólyom and Brunner (2000), Szente (2013b), 1594.
3 Halmai (2002), 189–211; Schwartz (2000).
4 In Hungarian literature, the term 'jurisdictional activism' refers to the efforts of the Court to extend its powers, whereas 'interpretive activism' means the practice that relies on extraconstitutional sources in its reasoning. For a comprehensive analysis of the interpretive practice of the Constitutional Court, see Szente (2013a) and Jakab and Fröhlich (2017).
5 'The rules relating to fundamental rights and obligations shall be laid down in Acts. A fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right'. Art. I. para (3) of the Fundamental Law.
6 According to Art. N. para (1) 'In the course of performing their duties, the Constitutional Court, courts, local governments and other state organs shall be bound to respect the principle that Hungary shall enforce the principle of balanced, transparent and sustainable budget management'.
7 For a further and detailed analyses of the recent case law in numbers see Gárdos-Orosz (2016) 345–390. A short summary is given in Gárdos-Orosz (2012) and Gárdos-Orosz (2017).

8 See the operation of this argument for constitutional changes in Pap (2018) 4.2.
9 This stipulation refers to the unwritten, and, according to the national mythology, the 'one-thousand-year' constitution before the Second World War.
10 Arts. N paras (1) and (3) and R para (3) of the Fundamental Law.
11 Art. 36 paras (4)–(5) of the Fundamental Law.
12 903/B/1990. AB határozat.
13 See also Kovács and Tóth (2011) 192–193.
14 184/2010 (X. 28.) AB határozat.
15 37/2011. (V. 10.) AB határozat.
16 Szente (2013b) 256–257.
17 20/2014 (VII. 3.) AB határozat.
18 Kolozsi, Banai, and Vonnák (2015) 60–87.
19 Act XXXVIII of 2014 on the Resolution of Questions Relating to the Uniformity Decision of the Curia Regarding Consumer Loan Agreements of Financial Institutions.
20 34/2014 (XI. 14.) AB határozat.
21 See also Act XL on the Rules of Settlement Provided for in Act XXXVIII of 2014 on the Resolution of Questions Relating to the Uniformity Decision of the Curia Regarding Consumer Loan Agreements of Financial Institutions and on Other Related Provisions.
22 23/2013. (IX. 25.) AB határozat.
23 According to statistics of the Constitutional Court, in 2015 630 motions were submitted to the Constitutional Court in the same subject and 1,300 constitutional complaints with essentially identical texts were submitted in the same period. Seven hundred foreign currency loan cases were active on 31 December 2015. Source: Alkotmánybíróság, 'Statisztika', http://alkotmanybirosag.hu/dokumentumok/statisztika/2015, accessed 14 February 2017.
24 3103/2016. (V. 24.) AB határozat, 3098/2016. (V. 24.) AB határozat, 3167/2016. (VII. 1.) AB határozat, 3222/2016. (XI. 14.) AB határozat, 3272/2016. (XII. 20.) AB határozat.
25 Gárdos-Orosz (2017).
26 Act CLXVII. of 2011 on retirement benefits, Art. 14. para (1) and (2).
27 23/2013. (IX. 25.) AB határozat.
28 11/1995 (III. 5.) AB határozat.
29 3194/2014. (VII. 14.) AB határozat.
30 See e.g. 17/1992. (III. 30.) AB határozat, 64/1993. (VI. 3.) AB határozat, 1138/B/1995. AB határozat, 51/2001. (IX. 15.) AB határozat, 109/2008. (IX. 26.) AB határozat, 867/B/1997. AB határozat.
31 Vékony v. Hungary, Judgement of 13 January 2015, no. 65681/13.
32 Source: Immigration and Asylum Office and www.police.hu.
33 Council Decision (EU) 2015/1601 of 22 September 2015.
34 12/2016. (VI. 22.) AB határozat.
35 See in details Szente (2016a) and Halmai (2016).
36 According to the Law No CLI of 2011 on the Constitutional Court, the Court reviews the decision of Parliament on rejecting or ordering a national referendum with respect to its consistency with the Fundamental Law and its legality. Art. 33 para (1). The next paragraph allows a merit review only in extraordinary conditions.
37 Halmai (2002) and Schwartz (2000).
38 3130/2016. (VI. 29) AB határozat, 3150/2016. (VII. 22.) AB határozat, 3151/2016. (VII. 22.) AB határozat.
39 'With a view to participating in the European Union as a member state, Hungary may exercise some of its competences arising from the Fundamental Law jointly with other member states through the institutions of the European Union under an international agreement, to the extent required for the exercise of the rights and the fulfilment of the obligations arising from the Founding Treaties'. Art. E para (2) of the Fundamental Law.

40 22/2016. (XII. 5.) AB határozat.
41 1053/E/2004. AB határozat; 72/2006. (XII. 15.) AB határozat; 9/2007. (III. 7.) AB határozat; 143/2010. (VII. 14.) AB határozat, 32/2008 (III. 12.) AB határozat.
42 See e.g. 61/B/2005 AB határozat; 66/2006 (XI. 29.) AB határozat; 87/2008 (VI. 18.) AB határozat.
43 Fazekas (2014). 59.
44 143/2010 (VII. 14.) AB határozat.
45 Ibid.
46 Ibid. See István Stumpf's concurring opinion.
47 32/2013. (XI. 22.) AB határozat.
48 36/2005. (X. 5.) AB határozat, 2/2007. (I. 24.) AB határozat.
49 2/2007. (I. 24.) AB határozat.
50 *Klass and others v Germany* 5029/71 (1978); *Malone v United Kingdom* 8691/79 (1984), *Leander v Sweden* 9248/81 (1987).
51 *Szabóand Vissy v. Hungary* 37138/14 (2016).
52 9/2014. (III. 21.) AB határozat.
53 13/2016 (VII. 18.) AB határozat.
54 See e.g. Schwartz (2000) 87–108; Sólyom and Brunner (2000); and Halmai (2002) 189–211.
55 Read more details in Chronowski and Varju (2015, (2016).
56 The extraordinary sectoral taxes in the first years of the Orbán Government have been introduced as only provisional measures referring to the difficult financial situation of the country. However, these arguments were dropped when these taxes were postponed, or imposed again.
57 Jogi Fórum, 2014. május 19. http://www.jogiforum.hu/interju/122.
58 8/2014. (III. 20.) AB határozat.
59 34/2014. (XI. 14.) AB határozat.
60 Vörös (2014) 1–20; Zeller (2013) 307–325; and Vincze (2013) 86–97.
61 For a more detailed description of this process, see Kovács and Tóth (2011) 183–203; Bánkuti, Halmai and Scheppele (2012a) 138–146; Pogány (2013) 341–367; Bánkuti, Halmai and Scheppele (2012b) 237–268. On international level, the European Parliament and the Venice Commission of the Council of Europe have adopted a number of resolutions and opinions criticising the backsliding of the rule of law in Hungary. See in details Szente (2017).
62 The whole speech can be found at http://hungarianspectrum.wordpress.com/2014/07/31/viktor-orbans-speech-at-the-xxv-balvanyos-free-summer-university-and-youth-camp-july-26-2014-baile-tusnad-tusnadfurdo/.
63 Sonnevend, Jakab and Csink (2015) 68; Uitz (2016) 396.
64 Sólyom (2015) 22.
65 Halmai (2014).
66 Szente (2016b).

Bibliography

Bánkuti, Miklós, Halmai, Gábor and Scheppele, Kim Lane, 'Disabling the Constitution' (2012a). 23 *Journal of Democracy*, 3138–146.

Bánkuti, Miklós, Halmai, Gábor and Scheppele, Kim Lane, 'From Separation of Powers to a Government Without Checks: Hungary's Old and New Constitutions', in Gábor Attila Tóth (ed.), *Constitution for a Disunited Nation. On Hungary's 2011 Fundamental Law* (Central University Press 2012b) 237–268.

Chronowski, Nóra and Varju, Márton, 'Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law' (2016). 8 *Hague Journal on the Rule of Law* 271–289.

Chronowski, Nóra and Varju Márton, 'Constitutional Backsliding in Hungary' (2015). *Tijdschrift voor Constitutioneel Recht*, No. 3.

Fazekas, Flóra, 'EU Law and Hungarian Constitutional Court', in Márton Varju and Ernő Várnay (eds), *European Union Law in Hungary: Institutions, Processes and the Law* (HVG-Orac 2014).

Gárdos-Orosz, Fruzsina, 'The Hungarian Constitutional Court in Transition: From Actio Popularis to Constitutional Complaint' (2012). 53 *Acta Juridica Hungarica, The Hungarian Journal of Legal Studies,* 4302–315.

Gárdos-Orosz, Fruzsina, 'Alkotmánybíróság', in András Jakab and yörgy Gajduschek (eds), *A magyar jogrendszer állapota 2015* (MTA TK 2016).

Gárdos-Orosz, Fruzsina, 'The Hungarian Constitutional Adjudication in Transition', in Péter Paczolay and Fanni Mandak (eds), *Hungarian and Italian Constitutional Change* (Dialog Campus 2017) (forthcoming).

Halmai, Gábor, 'The Hungarian Approach to Constitutional Review: The End of Activism? The First Decade of the Hungarian Constitutional Court', in Wojciek Sadurski (ed.), *Constitutional Justice, East and West. Democratic Legitimacy and Constitutional Courts in Post-Communist Europe in a Comparative Perspective* (Kluwer International Law 2002).

Halmai, Gábor, 'Grundlagen und Grundzüge staatlichen Verfassungsrecht: Ungarn', in Armin von Bogdandy, Pedro Cruz Villalón, and Peter M. Huber (eds), *Handbuch Ius Publicum Europaeum, Band I.* (C. F. Müller 2007).

Halmai, Gábor, 'In memoriam magyar alkotmánybíráskodás. A pártos alkotmánybíráskodás első éve' (2014). 18 *Fundamentum* 1–2, 36–64.

Halmai, Gábor, *The Invalid Anti-Migrant Referendum in Hungary* (2016); http://verfassungsblog.de/hungarys-anti-european-immigration-laws/.

Jakab, András and Fröhlich, Johanna, 'The Constitutional Court of Hungary', in András Jakab, Arthur Dyevre and Giulio Itzcovich (eds), *Comparative Constitutional Reasoning* (Cambridge University Press 2017).

Jogi Fórum, (2014). május 19. http://www.jogiforum.hu/interju/122.

Kolozsi, Péter, Banai, Ádám and Vonnák, Balázs, 'Phasing Out Household Foreign Currency Loans: Schedule and Framework' (2015). 14 *Financial and Economic Review* 60–87.

Kovács, Kriszta and Tóth, Gábor Attila, 'Hungary's Constitutional Transformation' (2011). 7 *European Constitutional Law Review* 2, 183–203.

Pap, L. András, *Democratic Decline in Hungary, Law and Society in an Illiberal Democracy* (Routledge 2018).

Pogány, István, 'The Crisis of Democracy in East Central Europe: The "New Constitutionalism"' (2013). 19 *European Public Law* 2, 341–367.

Schwartz, Herman, *The Struggle for Constitutional Justice in Post-Communist Europe* (The University of Chicago Press 2000).

Sonnevend, Pál, Jakab, András and Csink, Lóránt, 'The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary', in Armin von Bogdandy and Pál Sonnevend (eds), *Constitutional Crises in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania* (Hart 2015).

Sólyom, László and Brunner, Georg, *Constitutional Judiciary in a New Democracy: The Hungarian Constitutional Court* (University of Michigan Press 2000).

Sólyom, László, *Az alkotmánybíráskodás kezdetei Magyarországon* (Osiris 2001).

Sólyom, László, 'The Rise and Decline of Constitutional Culture of Hungary', in Armin von Bogdandy and Pál Sonnevend (eds), *Constitutional Crises in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania* (Hart 2015).

Szente, Zoltán, 'Breaking and Making Constitutional Rules – The Constitutional Effects of Financial Crisis in Hungary', in Xenophon Contiades (ed.), *Constitution in the Global Financial Crisis – A Comparative Analysis* (Ashgate 2013a).

Szente, Zoltán, 'The Interpretive Practice of the Hungarian Constitutional Court: A Critical View' (2013b). 14 *German Law Journal* 8, 1591–1614.

Szente, Zoltán, *The Controversial Anti-Migrant Referendum in Hungary is Invalid* (2016a); http://constitutional-change.com/the-controversial-anti-migrant-referendum-in-hungary-is-invalid/

Szente, Zoltán, 'The Political Orientation of Constitutional Judges in Hungary' (2016b). 1 *Constitutional Studies* 123–149.

Szente, Zoltán, 'Challenging the Basic Values – The Problems of the Rule of Law in Hungary and the Failure of the European Union to Tackle Them', in András Jakab and Dimitry Kochenov (eds), *The Enforcement of EU Law and Values. Ensuring Member States' Compliance* (Oxford University Press 2017).

Uitz, Renáta, 'The Illusion of a Constitution in Europe: The Hungarian Constitutional Court after the Fifth Amendment of the Fundamental Law', in John Bell and Marie-Luce Paris (eds), *Rights-Based Constitutional Review. Constitutional Courts in a Changing Landscape* (Edward Elgar 2016).

Vincze, Attila, 'Wrestling with Constitutionalism: The Supermajority and the Hungarian Constitutional Court' (2013). 8 *ICL Journal – Vienna Journal on International Constitutional Law* 1, 86–97.

Vörös, Imre, 'The Constitutional Landscape after the Fourth and Fifth Amendments of Hungarian Fundamental Law' (2014). 55 *Acta Juridica Hungarica* 1, 1–20.

Zeller, Judit, 'Nichts ist so beständig… Die jüngsten Novellen des Grundgesetzes Ungarns im Kontext der Entscheidungen des Verfassungsgerichts' (2013). 59 *Osteuropa-Recht* 3, 307–325.